

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

OP.No. 5743 of 2001(H)

PETITIONER:

RENY PAUL, VELLIYANAPARAMBIL HOUSE,
MANNATHOOR P.O., 686 723, PAMBAKUDA (VIA)
ERNAKULAM DISTRICT.

BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY
SRI.ABU MATHEW

RESPONDENTS:

1. UNION OF INDIA REPRESENTED BY THE SECRETARY TO
GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS,
NEW DELHI.
2. THE DIRECTOR GENERAL, BORDER SECURITY FORCE,
CGO COMPLEX, NEW DELHI.
3. THE COMMANDANT, BORDER SECURITY FORCE,
77 BATTALION, ROOPNAGAR, COOCHBEHAR,
WEST BENGAL.

SMT.S.AMBIKA DEVI, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP NOS.9543/01 & 52622/02 IN OP NO.5743 OF 2001 H

//DISMISSED//

11.06.2007.

SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: TRUE COPY OF NOTICE NO.ESTT/COI/RP/ACCIDENT/77/93/8694 DATED 8.8.94 ISSUED BY 3RD RESPONDENT.
- EXT.P2: TRUE COPY OF RELEVANT EXTRACT OF THE PROCEEDINGS OF THE COURT OF INQUIRY DATED 3.9.94.
- EXT.P3: TRUE COPY OF RECOMMENDATION DATED 3.10.94 OF THE 3RD RESPONDENT.
- EXT.P4: TRUE COPY OF REMARKS DATED 8.10.94 OF THE DEPUTY INSPECTOR GENERAL, BORDER SECURITY FORCE, JAMMU KASHMIR.
- EXT.P5: TRUE COPY OF REMARKS DATED 17.12.94 OF THE INSPECTOR GENERAL OF BORDER SECURITY FORCE, JAMMU.
- EXT.P6: TRUE COPY OF THE REPORT OF THE MEDICAL BOARD PERTAINING TO THE PETITIONER.
- EXT.P7: TRUE COPY OF UNSUITABILITY CERTIFICATE DATED NIL ISSUED BY 3RD RESPONDENT.
- EXT.P8: TRUE COPY OF ORDER NO.ESTT/1036/77/2K786266 DATED 10.6.2000 ISSUED BY 3RD RESPONDENT.
- EXT.P9: TRUE COPY OF ORDER NO.ESTT/1036/77BN/2K/10444-48 DATED 26.7.2000 ISSUED BY 3RD RESPONDENT TO THE PETITIONER.
- EXT.P10: TRUE COPY OF LETTER DATED 19.7.2000 ISSUED BY 2ND RESPONDENT TO 3RD RESPONDENT.
- EXT.P11: TRUE COPY OF REPRESENTATION DATED 9.8.2000 SENT BY THE PETITIONER TO THE 2ND AND 3RD RESPONDENTS.
- EXT.P12: TRUE COPY OF LETTER NO.PAD/29-61066/PN-III/2000/BSF DATED 27.11.2000 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.

RESPONDENT'S EXHIBITS:

- ANNEXURE R1: PHOTOCOPY OF THE DIRECTORATE (RECRUITMENT SECTION) LETTER DATED 30.1.2003.

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ANNEXURE R2: PHOTOCOPY OF THE MEDICAL BOARD SANCTION (CLAIM
COMPENSATION) PROCEEDING DATED 18.8.96.

ANNEXURE R3: PHOTOCOPY OF the MEDICAL BOARD SANCTION (CLAIM
COMPENSATION) PROCEEDING DATED 21.8.97.

ANNEXURE R4: PHOTOCOY OF THE INTIMATION TO THE PETIITONER AS PER LETTER
ISSUED BY THE 2ND RESPONDENT DATED 27.11.2000.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.5743 OF 2001

Dated this the 11th day of June, 2007

JUDGMENT

The petitioner, then a constable with the BSF, met with an accident on 17.6.1993, while performing his duties of Dak Runner. He was travelling in a civil bus within the limits of Samba Police Station. The authorities concluded that there was no fault or negligence on the part of the petitioner and that he met with the accident while performing his duties. Accordingly, it was directed that the expenditure of his treatment should be borne by the service and he should also be extended other possible help. Resultantly, the recommendations in Ext.P2, following the proceedings of the court of enquiry, was accepted by the Commandant, resulting in the recommendations contained in Ext.P4, whereby, it was held that the injuries sustained by the petitioner, as stated therein, are attributed to bonafide Government duty and that the expenditure for

treatment of the petitioner shall be borne by the State and he may be provided artificial limb/wheel chair at the cost of Government expenses.

2. Before proceeding further, I may notice that as a net result of the injury, the petitioner lost a leg, it being amputated; had serious injuries to a hand, which, going by the medical reports, continued to have a deformed ulna and attendant problems. Following Ext.P4, in terms thereof, the petitioner was put on light duty, keeping in view, his infirmity.

3. Going by the counter affidavit, the petitioner applied on 16.8.1997 for disability pension by way of lump sum contribution.

4. Rule 9 (4) of the Central Civil Services (Extra Ordinary Pension) Rules that prevailed as on the date of accident provided that if the Government servant is retained in service in spite of disablement, he shall be paid a compensation in lump sum on the

basis of the disability pension admissible to him in accordance with the provisions of Rule 9 (2), by arriving at the capitalised value of such disability pension with reference to the Commutation table in force from time to time. Payment of such compensation in lump sum has to be in lieu of the disability pension. Admittedly, the petitioner was paid an amount of Rs.52,060/- on 3.11.1997. Thereafter, he was retained in service and following the recommendation (c) in Ext.P4, he was put on light duty, having regard to his infirmity.

5. With the passage of time, as could be seen from Exts.P6 and P7, the medical authorities came to the conclusion that he is unsuitable to serve the BSF in his capacity as GD constable. To conclude so, in furtherance of the findings of Ext.R3 report dated 20.8.1997, it was noticed that the petitioner was having cervical dorsal spontylosis, which is one of the principal disabilities, as noticed in Sl.No.11 (iv) of Ext.P6. It was noticed that certain other complaints were also recorded in Ext.P6.

6. Following his being boarded out from the BSF, the petitioner requested the authorities as per Ext.P11 for disability pension. He then took the stand that the grant of compensation in lieu of disability pension, as already noticed above, was an error attributable to the unit authorities. However, that contention is mentioned here only to be rejected because, it is the undisputed averment in the counter affidavit and the statement in Ext.P12 produced by the petitioner himself that the ground of compensation on computation basis in lieu of disability pension was on the specific application in that regard by the petitioner. Though Ext.P12 is a document addressed by one among the official respondents to the petitioner, I am inclined to believe its contents, as against the petitioner, because nothing is shown to persuade this Court against presuming the regularity of the official and public acts involved in the generation of Ext.P12.

7. The stand of the official respondents is that there is no provision in the Extra Ordinary Pension Rules, by which, the

petitioner can pay back to the establishment the amount collected by him towards computed value as compensation, to enable him to the benefit of disability pension, which would have been otherwise available. The Extra Ordinary Pension Rules were being amended from time to time and with effect from 1.1.1996, i.e., before the petitioner had applied for commuted compensation in lieu of disability pension in terms of Rule 9 (4) of the Rules, the disability element stood modified as per the Government of India decision contained in O.M.No.45/22/97-P-PW(C) dated 3.2.2000. The disability pension was also to be revised in terms of that Government Order. If that were so, the fixation of any compensation in lieu of disability pension ought to have been looked at in the light of the said Government decision. It was also necessary that the question whether the petitioner, at the time of being boarded out, had any aggravation of his disability is also a matter that should have fallen for consideration, particularly when the condition of cervical dorsal spondylosis noticed as per Ext.P6 on the petitioner, then aged only 31 years, ought to have been specifically considered as to

whether identifiable as a situation attributable to, or aggravated by, service and referable to the injuries sustained by him during his duties, which incapacitated him.

8. In the aforesaid circumstances, this writ petition is disposed of directing that the competent among the official respondents will take up the case of the petitioner in the light of what is stated above and take a decision de novo, within a period of four months from the date of receipt of a copy of this judgment.

It is a matter of record that by order dated 20.8.2003 on C.M.P.No.52622/02, there was a direction of this Court to pay the petitioner monthly pension. Following this judgment, any such payment already made, having regard to the fact that the order was towards pension, shall not be recovered. It is further directed that though following this judgment, any further payment in that regard could be stopped, if the directions contained in this judgment are not being complied with, within

the time frame indicated above, the said interim order will survive and the petitioner will be entitled to monthly pension as directed therein and that order would then be the final order and direction in this case. No costs.

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Judge

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